



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Testimony of the Connecticut Insurance Department

Before the

Insurance and Real Estate Committee

February 11th, 2010

Senate Bill 12 – An Act Clarifying Post Claims Underwriting

The Connecticut Insurance Department would like to offer the following comments in opposition to Senate Bill 12--An Act Clarifying Post Claims Underwriting. This proposal makes numerous changes to the existing law on post claims underwriting to address problems that the Department believes do not exist, primarily due to the passage of Public Act 07-113. While Connecticut never had a significant problem with rescissions of health insurance policies, as did a state like California, we have had our share of problems with pre-existing condition claim denials. Due to the enactment of PA 07-113, An Act Concerning Post Claims Underwriting, along with the Department's highly publicized enforcement action against Assurant that resulted in a \$2.1 million fine and \$900,000 in restitution to consumers, considerable change has occurred in the marketplace leading to a reduction in improper conduct.

The Department believes that the following data may be useful as you consider Senate Bill 12. For calendar year 2008, there were 47 policy rescissions where the carrier completed medical underwriting and resolved all reasonable medical questions. The total number of policy rescissions for calendar year 2009 was 34. The total number of individual health policies issued in 2009 by the six carriers actively participating in the individual health insurance market was 35,237.

Of the 35,237 policies written in 2009, 34 were rescinded without prior approval of the Department; that is, less than 1/10th of 1% of all these policies. These policies were issued pursuant to the insurer or health care center having completed medical underwriting and resolving all reasonable medical questions on the application. By way of background, carriers are required to seek permission from the Department to rescind a policy ONLY in those instances when they have NOT conducted pre-sale underwriting.

For the period beginning October 1, 2008 to present, the Insurance Department has received a total of four (4) consumer complaints claiming unjustified post claim underwriting. Our review of those complaints found that in one instance the carrier had not completed adequate underwriting and were told they could not rescind the policy because they had not properly completed all outstanding questions presented on the application. The second case was upheld. The third case resulted in our negotiating with the carrier to pay claims for the undisclosed pre-existing condition even though they were within their rights to rescind the policy. We felt that while the carrier was legally correct in rescinding the coverage because the undisclosed information was material to its risk assessment, the lack of notice to the individual while concurrently pre-authorizing services created an unfair reliance by the

member that we felt should be honored. The carrier did, in fact, pay those claims and then subsequently cancelled the policy on a go forward basis. Finally, the fourth case is currently under review.

The information outlined above reflects cases known to the Insurance Department. The Department would like to encourage the Office of the Healthcare Advocate to forward to our agency any problems that may have been brought to their attention. Thus far, no other cases have been referred to our agency for regulatory review

In addition, compliance with this law is now an element of review for our Market Conduct Examinations. All companies having undergone market conduct exams since the implementation of the law have been found to be in compliance.

The bill as proposed has serious flaws. We will not take your time to identify each of them, although we would be happy to provide a section by section analysis of the Department's concerns, but we do want to point to a few significant issues:

- The bill seeks to have insurers and carriers obtain prior approval for all rescissions, cancellations and limitations, no matter what steps they have taken on a presale basis. As currently written, that would also draw in cancellations for non-payment of premium or loss of eligibility.
- The bill seeks to absolve the applicants for any responsibilities for statements made on the application. It is unclear how that is reconciled with the requirement that applicants attest that they have read and certify the information is true and correct on each application.
- Language in lines 105-108 does not require positive action on the part of the applicant for a health insurance application to be accepted. This language binds the applicant unless the applicant rescinds the agreement in writing not later than 10 days after receipt of such letter. The Department currently requires that the completed application be delivered to the applicant for review and prior signature prior to delivery of the contract. Disclosure language is also required to emphasize the importance of the accuracy of the responses on the application and the possibility of rescission of the contract. This bill takes these protections away.

Connecticut's post-claims underwriting law appears to be working as intended without any disruption to Connecticut's individual marketplace. The law is seen as a national model and any changes at this time are premature. The Department will continue to monitor compliance with the law and will certainly recommend any changes in the future.

The Connecticut Insurance Department appreciates the opportunity to comment on Senate Bill 12.